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SIPDIS

STATE FOR IO/SHA, DRL/MLA

E.O. 12958: N/A

TAGS: PHUM UNHRC

SUBJECT: SRS ON ARBITRARY DETENTION, FREEDOM OF EXPRESSION
AND TORTURE REGARDING ABRAHAM AL-MASHDANI

1. Mission received the following communication from Leila Zerrougui, Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Ambeyi Ligabo, Special Rapporteur on the Promotion and Protection of Human Right to the Freedom of Opinion and Expression, and Manfred Nowak, Special Rapporteur on the Question of Torture, regarding Mr. Abraham Al-Mashdani who is currently being detained at Abu Ghraib. This communication has been forwarded to IO/SHA via e-mail and is number 27 on the Geneva 2005 Communications Log.

2. Begin text of letter:

Reference: UA G/SO 218/2 G/SO 214(33-20)
USA 9/2005

2 September 2005

Excellency,

We have the honour to address you in our capacities as Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the question of torture pursuant to Commission on Human Rights resolutions 2003/31, 2002/48 and 2005/39.

Permit us first of all to express our most sincere condolences to your Government and to the families of all those who lost their life, as well as our solidarity to those injured and to those who have lost their homes and livelihoods as a consequence of the terrible flooding and destruction caused by the hurricane Katrina.

In connection with our above-referenced mandates, we would like to draw the attention of your Government to information we have received concerning Abraham Al-Mashadani, a 36-year old Iraqi freelance cameraman and photographer working for Routers in Ramadi.

According to information received, on 8 August 2005, he was arrested by US marines after images of US troops were found on his videos, cameras and desktop computer. The spokesman for the US detainee operations in Iraq stated that Mr. Abraham Al-Mashadani will not be able to receive visitors for the first 60 days of his detention, including his family or a lawyer. No justification for his arrest has been provided. Mr. Abraham Al-Mashadani is currently being detained at Abu Ghraib.

In view of his incommunicado detention, concern is expressed that Mr. Abraham Al-Mashadani risks being subjected to torture or other forms of ill-treatment.

Without in any way making any determination on the facts and circumstances of this case and on whether the detention of the above-mentioned person is arbitrary or not, we would like to appeal to your Excellency's Government, to take all necessary measures to guarantee the right of the above named person not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

Furthermore, we should like to appeal to your Excellency to seek clarification of the circumstances with a view to ensuring that the right to physical and mental integrity of the above-named person is protected. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We would also like to draw your Excellency's attention to Commission on Human Rights resolutions 2005/39 which remind all States that "prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person." (para. 9).

We should also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression of the above mentioned person, in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and reiterated in article 19 of the International Covenant on Civil and Political Rights which provide that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

We urge your Government and the Government of Iraq, to whom we are addressing an analogous communication, to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Commission, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide details of the charges, if any, brought against Mr. Abraham Al-Mashadani and how these charges, as well his arrest, are compatible with national and international human rights norms and standards, including those of a fair trial in compliance with Article 14 of the International Covenant on Civil and Political Rights. Please provide a copy of the relevant national law.
4. Please explain how detaining Mr. Abraham Al-Mashadani incommunicado is compatible with national and international human rights norms and standards.
5. In the event that the arrest and detention of Mr. Abraham Al-Mashadani is found to be unlawful, please indicate whether, in accordance with international law, compensation has been provided to him.

We undertake to ensure that your Government's response to each of these questions is accurately reflected in the reports we will submit to the Commission on Human Rights for its consideration.

Accept, Excellency, the assurances of our highest consideration.

Leila Zerrougui
Chairperson-Rapporteur of the Working Group on Arbitrary Detention

Ambeyi Ligabe
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Manfred Nowak
Special Rapporteur on the question of torture

End text of letter.

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